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Attorneys for Shuffle Tech International, LLC,
Richard Schultz, and Poydras-Talrick Holdings, LLC

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

DIGIDEAL CORPORATION, a)	
Washington corporation,)	CASE NO.: 2:14-CV-00277-JLQ
)	
Plaintiff,)	ANSWER TO THIRD-PARTY
)	COUNTERCLAIM
vs.)	
)	
SHUFFLE TECH INT'L, LLC, an)	
Illinois limited liability company,)	
RICHARD SCHULTZ, an individual,)	
POYDRAS-TALRICK HOLDINGS,)	
LLC, a Delaware limited liability)	
company,)	
)	
Defendants.)	
)	

Answer to Third-Party Counterclaim

COHEN-JOHNSON, LLC
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Las Vegas, Nevada 89119
Phone: (702) 823-3500
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SHUFFLE TECH INTERNATIONAL,)
 LLC, an Illinois limited liability)
 company, and POYDRAS-TALRICK)
 HOLDINGS, LLC, a Delaware limited)
 liability company,)

Counterclaimants,)

vs.)

DIGIDEAL CORPORATION, a)
 Nevada corporation,)

Counterdefendant.)

SHUFFLE TECH INTERNATIONAL,)
 LLC, an Illinois limited liability)
 company, and POYDRAS-TALRICK)
 HOLDINGS, LLC, a Delaware limited)
 liability company,)

Third-Party Plaintiffs/
 Counterdefendants)

vs.)

MICHAEL J. KUHN, an individual,)

Third-Party Defendant/
 Counterclaimant,)

Third-Party Counterdefendants Shuffle Tech International, LLC (Shuffle
 Tech) and POYDRAS-TALRICK, LLC (Poydras), by and through their counsel
 of record Jeffrey T. Sperline, of Sperline Raekes, PLLC and H. Stan Johnson, of
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Answer to Third-Party Counterclaim

Cohen-Johnson, LLC, for their Answer to Third-Party Counterclaimant Michael J. Kuhn's Counterclaim admit, deny, and allege as follows:

A. PARTIES, JURISDICTION AND VENUE

1.1 Upon information and belief, admit.

1.2 Upon information and belief, admit.

1.3 Admit.

1.3 Admit.

1.4 Admit.

1.5 Admit.

1.6 Deny.

1.7 Admit.

1.8 Third-Party Counterdefendants are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 1.8 of the Third-Party Counterclaim and therefore deny them.

B. FACTS

2.1 As to paragraph 2.1 of the Third-Party Counterclaim, Third-Party Counterdefendants admit, deny, and allege as set forth above.

2.2 Admit.

2.3 Admit.

////

Master Agreement

2.4 Admit.

2.5 Admit.

2.6 Deny.

2.7 Deny.

2.8 Deny.

2.9 Admit.

2.10 Deny; and allege that pursuant to Section 5.2 of the Master Agreement, Poydras agreed to pay DigiDeal Corporation (DigiDeal) “the amount of approximately FIVE HUNDRED THOUSAND U.S. DOLLARS (\$500,000 and 00/100) for the research, development, licensing and marketing, and production and sale or lease of 200 [Licensed Product] Units.”

2.11 Admit.

2.12 Deny; and allege that under Section 5.10 of the Master Agreement, DigiDeal was obligated to pay royalties upon the “sale” of units, not when units were “placed into operation” as alleged in DigiDeal’s Complaint.

2.13 Admit.

2.14 Deny.

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Answer to Third-Party Counterclaim

1 2.15 Admit that such a lawsuit was filed by SHFL Entertainment, Inc.
2 against DigiDeal; and allege that the litigation commenced on October 10, 2012 in
3 the United States District Court, District of Nevada.
4

5 2.16 Deny.

6 **First Amendment**

7
8 2.17 Deny.

9 2.18 Deny.

10 2.19 Deny.

11
12 2.20 Third-Party Counterdefendants are without sufficient knowledge or
13 information to form a belief as to the truth or falsity of the allegations in paragraph
14 2.20 of the Third-Party Counterclaim and therefore deny them.
15

16 2.21 Third-Party Counterdefendants are without sufficient knowledge or
17 information to form a belief as to the truth or falsity of the allegations in paragraph
18 2.21 of the Third-Party Counterclaim and therefore deny them.
19

20 2.22 Admit.

21 2.23 Admit.

22 **Poydras' Obligations**

23
24 2.24 Admit.

25
26 2.25 Admit; and allege that Poydras's obligations to pay advanced royalties
27 to Shuffle Tech and advance additional monies to DigiDeal was conditioned on
28

1 DigiDeal's strict performance of its obligations under the Master Agreement, which
2 obligations DigiDeal breached, thereby preventing Poydras from performing in
3 spite of its repeated attempts to arrange additional funding, which DigiDeal ignored.
4

5 2.26 Deny.

6 2.27 Admit.

7 2.28 Deny.

8 2.29 Deny.

9 2.30 Admit.

10 2.31 Admit; and allege that pursuant to Recital F.1 of the First Amendment,
11 the parties specifically agreed that Shuffle Tech was not liable for the costs of the
12 SHFL Entertainment litigation, but it agreed to pay said costs from its share of the
13 royalties it was entitled to receive and would have received but for DigiDeal's
14 breach of its obligations under the Agreements; the parties further agreed pursuant
15 to paragraph 11.1 that Shuffle Tech would be entitled to reimbursement for all fees,
16 costs and/or other damages payable to any of the parties that it may recover in the
17 patent infringement and/or related litigation with SHFL Entertainment and that
18 DigiDeal would cooperate with Shuffle Tech as required to pursue reimbursement
19 from SHFL Entertainment, Inc. to Shuffle Tech of all of its fees, costs, and/or other
20 damages sustained and incurred in the litigation.
21

22 2.32 Deny.

1 2.33 Third-Party Counterdefendants are without sufficient knowledge or
2 information to form a belief as to the truth or falsity of the allegations in paragraph
3 2.33 of the Third-Party Counterclaim and therefore deny them.
4

5 2.34 Third-Party Counterdefendants are without sufficient knowledge or
6 information to form a belief as to the truth or falsity of the allegations in paragraph
7 2.34 of the Third-Party Counterclaim and therefore deny them.
8

9 2.35 Third-Party Counterdefendants are without sufficient knowledge or
10 information to form a belief as to the truth or falsity of the allegations in paragraph
11 2.35 of the Third-Party Counterclaim and therefore deny them.
12

13 **Post-Termination of Poydras**
14

15 2.36 Deny.

16 2.37 Deny.

17 2.38 Deny.

18 2.39 Deny.

19 2.40 Deny.

20 2.41 Third-Party Counterdefendants are without sufficient knowledge or
21 information to form a belief as to the truth or falsity of the allegations in paragraph
22 2.41 of the Third-Party Counterclaim and therefore deny them.
23

24 **Negotiations and Second Amendment between Shuffle Tech and DigiDeal**
25

26 2.42 Admit.
27
28

1 2.43 Admit.

2 2.44 Admit.

3 2.45 Admit.

4 2.46 Admit.

5 2.47 Admit.

6 2.48 Admit.

7 2.49 Admit.

8
9
10 2.50 Admit; and allege that said license was limited to the State of
11 Washington and continent upon DigiDeal performing its obligations, which it failed
12 to do, thereby allowing Shuffle Tech in its discretion to pursue other licensees
13 within the State of Washington.
14

15
16 2.51 Admit.

17 2.52 Admit.

18
19 2.53 Admit; and incorporate Third-Party Counterdefendants' answer to
20 paragraph 2.31 above.
21

22 2.54 Deny.

23 2.55 Deny.

24 2.56 Deny.

25 2.57 Deny.

26 2.58 Deny.
27
28

1 2.59 Deny.

2 2.60 Deny.

3 2.61 Deny.

4 2.62 Admit.

5
6 **III. FIRST CAUSE OF ACTION: ESTOPPEL**

7
8 3.1 As to paragraph 3.1 of the Third-Party Counterclaim, Third-Party
9 Counterdefendants admit, deny, and allege as set forth above.

10 3.2 Deny.

11
12 3.3 On September 16, 2015, The Honorable Justin L. Quackenbush
13 granted, in part, Third-Party Counterdefendants' Rule 12(B)(6) Motion to Dismiss
14 Third-Party Counterclaims and entered an Order dismissing with prejudice Third-
15 Party Counterclaimant's Counterclaims for frivolous claim under RCW 4.84.185
16 and Fed.R.Civ.P. 11 (Counterclaim – Second Cause of Action), waiver
17 (Counterclaim – Third Cause of Action), and laches (Counterclaim – Fourth Cause
18 of Action). Accordingly, Third-Party Counterdefendants are not required to answer
19 paragraphs 4.1 through 6.3 of the Third-Party Counterclaims.
20
21

22 3.4 All allegations not specifically addressed above due to the nature of
23 the language and construction of the allegations, or for any other reason, are
24 specifically denied.
25
26

27 ////
28

3.5 Third-Party Counterdefendants have been forced to retain the services of counsel to defend them against Third-Party Counterclaimant's Counterclaim alleging Estoppel and they are entitled to an award of reasonable attorneys' fees and costs incurred herein.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Third-Party Counterclaimant lacks standing to assert any claims against Third-Party Counterdefendants arising out of the Agreements between DigiDeal, Shuffle Tech, and Poydras.

Second Affirmative Defense

The Third-Party Counterclaim is barred by the doctrines of laches and/or waiver.

Third Affirmative Defense

The Third-Party Counterclaim is barred by applicable statutes of limitation.

Fourth Affirmative Defense

The Third-Party Counterclaim is barred by the doctrine of estoppel.

Fifth Affirmative Defense

The Third-Party Counterclaim is barred by the doctrine of unclean hands.

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Sixth Affirmative Defense

Third-Party Counterdefendants acted in good faith and dealt fairly with Third-Party Counterclaimant in all transactions between the parties to this action.

Seventh Affirmative Defense

Third-Party Counterclaimant has failed to mitigate his damages, if any.

Eighth Affirmative Defense

Third-Party Counterclaimant has failed to meet conditions precedent.

Ninth Affirmative Defense

Third-Party Counterclaimant's damages, if any, were solely caused by his own actions and/or fault and/or the fault of Plaintiff/Counterdefendant DigiDeal.

Tenth Affirmative Defense

Plaintiff/Counterdefendant DigiDeal's breaches of the agreements with Shuffle Tech and Poydras rendered any performance by them impossible and bars in whole or in part the relief requested in the Third-Party Counterclaim.

Eleventh Affirmative Defense

Third-Party Counterclaimant breached his duty of good faith and fair dealing with Third-Party Counterdefendants.

Twelfth Affirmative Defense

Third-Party Counterdefendants' actions were lawful and justified.

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Reservation of Affirmative Defenses

Third-Party Counterdefendants hereby incorporate by reference those affirmative defenses enumerated in Rule 8, Fed.R.Civ.P., as if fully set forth herein. Furthermore, and pursuant to Rule 8, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of this Answer to Third-Party Counterclaim to allege additional affirmative defenses. If further investigation or discovery reveals the applicability of such defenses, Third-Party Counterdefendants reserve the right to seek leave of Court to amend their Answer to Third-Party Counterclaim to specifically assert any such defenses. These defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

WHEREFORE, having fully answered the allegations of the Third-Party Counterclaim, Third-Party Counterdefendants pray for and demand judgment against Third-Party Counterclaimant as follows:

A. That Third-Party Counterclaimant take nothing by his Third-Party Counterclaim;

B. That the Court dismiss Third-Party Counterclaimant's Counterclaim with prejudice;

C. That the Court award Third-Party Counterdefendants their reasonable attorneys' fees and costs; and

1 D. That the Court enter such other and further relief on behalf of Third-
2 Party Counterdefendants as is just and reasonable.

3
4 DATED this 25th day of September, 2015.

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21 *Attorneys for Third-Party Counter-*
22 *Defendants Shuffle Tech*
23 *International, LLC, and Poydras-*
24 *Talrick Holdings, LLC*

25 ////

26 ////

27 ////
28

Answer to Third-Party Counterclaim

CERTIFICATE OF SERVICE

Pursuant to LR-5.1, I certify that I am an employee of Cohen-Johnson, LLC, and that on this date I caused to be served a true and correct copy of the **ANSWER TO THIRD-PARTY COUNTERCLAIM** on all the parties to this action by the method(s) indicated below:

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States Mail, Las Vegas, Nevada and addressed to:

LAW OFFICE OF EOWEN ROSENTRATER, PLLC.
C/o Eowen S. Rosentrater, Esq.
108 Washington Street, Suite 302
Spokane, Washington 99201
eowen@eowenlawoffice.com
Attorney for Third-Party Counterclaimant Michael J. Kuhn

 X by using the CM/ECF Notification System addressed to:

LAW OFFICE OF EOWEN ROSENTRATER, PLLC.
C/o Eowen S. Rosentrater, Esq.
108 Washington Street, Suite 302
Spokane, Washington 99201
eowen@eowenlawoffice.com
Attorney for Third-Party Counterclaimant Michael J. Kuhn

 X by electronic email addressed to the above:
_____ by personal or hand/delivery addressed to:
_____ by facsimile (fax) addresses to:
_____ by Federal Express/UPS or other overnight delivery addressed to:

DATED the 25th day of September, 2015.

/ Michael B. Morrison
An employee of Cohen-Johnson, LLC